

OFFICE OF LEGISLATIVE RESEARCH  
PUBLIC ACT SUMMARY



**PA 13-205—sSB 1019**

*Environment Committee*

*Judiciary Committee*

**AN ACT CONCERNING ADMINISTRATIVE STREAMLINING AT THE  
DEPARTMENT OF ENERGY AND ENVIRONMENTAL PROTECTION**

**SUMMARY:** This act expands the scope of the law governing radiation and radioactive material. It allows the Department of Energy and Environmental Protection (DEEP) commissioner to (1) issue, modify, or revoke orders to correct or abate violations of the law's operation or possession, registration, licensing, and recordkeeping requirements and (2) suspend or revoke certain registrations. The act broadens his ability to issue cease and desist orders and seek an injunction. It also establishes criminal penalties for certain violations and false statements.

The act makes other changes in the environmental laws. It:

1. allows DEEP to publish certain notices of tentative determination on its website, instead of in newspapers;
2. allows, rather than requires, the DEEP commissioner to establish boundary lines restricting activity along certain tidal or inland waterways or flood-prone areas without authorization, and revokes any order establishing these lines; and
3. repeals the Mid-Atlantic States Air Pollution Control Compact.

The act eliminates three DEEP reporting requirements on (1) known contaminated wells and leaking underground storage tanks, (2) emissions reductions from the state's motor vehicle emissions inspection program, and (3) air quality.

It also makes technical and conforming changes.

**EFFECTIVE DATE:** October 1, 2013, except the section removing the emissions and air quality report requirements takes effect July 1, 2013.

§§ 3-7, 11-12, & 14 — RADIATION AND RADIOACTIVE MATERIAL

*Prohibited Acts*

Existing law prohibits anyone from using, manufacturing, producing, transporting, transferring, receiving, acquiring, owning, or possessing any ionizing radiation source (e.g., x-ray machines) unless exempt, licensed, or registered. The act expands this prohibition to include (1) operating x-ray devices for diagnostic or therapeutic purposes in medicine without being registered by DEEP and (2) using naturally occurring radioactive material or radioactive isotopes to diagnose or treat diseases or for research or other purposes in hospitals without registering this information with DEEP.

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### *Eliminated Hearing Requirement*

The act removes a requirement that the DEEP commissioner hold a hearing, subject to judicial review, at the request of anyone whose interests may be affected, in proceedings on (1) issuing or modifying rules and regulations to control ionizing radiation sources; (2) determining compliance with, or granting exceptions from, DEEP rules and regulations; and (3) granting, suspending, revoking, or amending a license.

### *Orders to Abate or Correct Violations, Service, and New Hearing Procedure*

The act authorizes the DEEP commissioner to issue, modify, or revoke any order to correct or abate violations of provisions of the radiation and radioactive material law concerning operation or possession, registration, licensing, and recordkeeping, and any regulation adopted or license issued under it. The order may include necessary remedial measures.

The act requires these orders to be served by (1) certified mail, return receipt requested; (2) a state marshal; or (3) an indifferent person. If a state marshal or indifferent person serves the order, he or she must serve a true copy of it. The original, with an endorsed return of service, must be filed with the commissioner. The order is deemed issued upon service or deposit in the mail, whichever applies. It must state why it was issued and give a reasonable time for compliance.

Under the act, an issued order is final unless a person aggrieved by it files a written request for a hearing before the commissioner within 30 days after its issuance. In that case, the commissioner must then hold a hearing as soon as practicable. After the hearing, he must consider all the evidence and affirm, modify, or revoke his order. He must notify the order recipient of his decision by certified mail, return receipt requested. The commissioner may modify or extend the time for complying with an order if he believes the modification or extension is advisable or necessary. Any modification or extension is considered a revision of an existing order, not a new order, and there can be no hearing or appeal from it.

The act allows anyone aggrieved by the commissioner's final order to appeal to New Britain Superior Court.

### *Cease and Desist Orders and Registration Revocation or Suspension*

By law, the DEEP commissioner can issue a cease and desist order when he finds that a person is causing, engaging in, maintaining, or about to cause, engage in, or maintain, certain conditions or activities, including those under the radiation and radioactive material laws, that will, or are likely to, result in imminent and substantial damage to the environment or public health (CGS § 22a-7). He can also issue the order when he believes a person is conducting, is about to conduct, or has conducted an activity without a required license that will, or is likely to, result in imminent and substantial damage to the environment or public health. A person to whom the commissioner issues the order must immediately comply with it.

The act expands the commissioner's authority by allowing him to also issue

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cease and desist orders for any violation of the radiation and radioactive materials law's operation or possession, registration, licensing, and recordkeeping requirements. It also allows him to, upon showing cause and after a hearing, suspend or revoke a registration to operate an ionizing radiation source, to conduct certain activities involving radioactive materials, or for an x-ray device for medical treatment.

### *Injunctions Against Violations*

The act expands the DEEP commissioner's authority to seek an injunction. Under prior law, when he believed anyone had engaged in or was about to engage in an act or practice that violated certain laws, rules, regulations, or orders pertaining to radioactive material or radiation sources, he could ask the attorney general to seek an order (1) enjoining the act or practice or (2) directing compliance. The court could issue a permanent or temporary injunction, restraining order, or other order.

The act repeals this provision and replaces it with a broader one that covers any act, practice, or omission that violates or will violate the radiation and radioactive material laws, including the hospital and x-ray devices registration requirements not covered by prior law, and any regulation adopted or order issued under these laws. It specifies that the attorney general must bring the action for injunctive relief in New Britain Superior Court. It allows the court's order to require remedial measures, in addition to direct compliance. The act also requires that these actions generally take precedence over others in the order of trial.

### *Penalties for Criminally Negligent Actions and False Statements*

The act subjects anyone who, with criminal negligence, violates the radiation and radioactive material laws, or a regulation, order, or license adopted or issued under them, to a penalty of up to \$25,000 for each day of violation, up to one year in prison, or both. A subsequent conviction is punishable by a fine of up to \$50,000 for each day of violation, up to two years in prison, or both.

It also subjects anyone who, with criminal negligence, makes a false statement, representation, or certification in an application, registration, notification, or other document filed or required to be maintained under these laws, to the same penalties as above.

By law, a person acts with "criminal negligence" with respect to a result or a circumstance described by a statute defining an offense when he or she fails to perceive a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation (CGS § 53a-3).

### *Penalties for Making Knowing False Statements*

The act subjects anyone who knowingly makes a false statement, representation, or certification in an application, registration, notification, or other document filed or required to be maintained under the radiation and radioactive material laws, to a penalty of up to \$50,000 for each day of violation, up to three

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years in prison, or both. A subsequent conviction is punishable by a fine of up to \$50,000 for each day of violation, up to 10 years in prison, or both.

A separate, generally applicable law already prohibits anyone from intentionally making a false written statement, under oath or on a form with a notice that a false statement is punishable, if he or she (1) does not believe the statement is true and (2) intends to mislead a public servant. A violation is a class A misdemeanor (see Table on Penalties) (CGS § 53a-157b).

### §§ 2 & 12 — PUBLIC NOTICE

The act allows the DEEP commissioner to publicly notice a tentative determination (i.e., DEEP's recommended action) for a permit that requires newspaper publication on the department's website. He may do so if the (1) public notice is posted on the website for the entire public notice period and (2) date, time, and nature of opportunity for public participation is published at the same time in an advertisement in a newspaper with general circulation in the affected area. The advertisement must be at least 1/16 of a page and include the website address for details on the public notice.

### §§ 1, 10, & 13 — STREAM CHANNEL ENCROACHMENT LINES

By law, the DEEP commissioner is responsible for permitting encroachments, obstructions, or hindrances along certain tidal or inland waterways or flood-prone areas. He establishes, by order, the boundary (encroachment) lines along these waterways or areas beyond which no one can place or maintain an encroachment, obstruction, or hindrance without his authorization.

Prior law required him to establish these lines. The act permits him to do so. It also specifies that any order from the commissioner establishing these lines on or before October 1, 2013 is deemed revoked. By revoking the established lines and allowing rather than requiring that the commissioner establish them, the act ends the current permitting program as of October 1, 2013.

### §§ 8-9 & 12 — REPORTING REQUIREMENTS

#### *Motor Vehicle Emissions Inspection Program*

The act eliminates two DEEP reports related to the Department of Motor Vehicles' motor vehicle emissions inspection program. Specifically, it eliminates the requirement that the commissioner report to the Transportation Committee (1) quarterly on emissions reductions from operating the program and (2) annually on air quality in Connecticut.

#### *Contaminated Well and Leaking Underground Storage Tank Inventory*

By law, the DEEP commissioner must compile an inventory of known contaminated wells and leaking underground storage tanks. The act eliminates a requirement that he annually submit the inventory to the Environment Committee.

### §§ 10 & 14 — AIR POLLUTION CONTROL COMPACT

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The act repeals the Mid-Atlantic States Air Pollution Control Compact, an interstate compact authorized in 1967 to create a commission for addressing interstate air pollution problems. The compact was not implemented.

### BACKGROUND

#### *Radioactive Materials and Ionizing Radiation*

By law, “radioactive materials” include any solid, liquid, or gas that spontaneously emits ionizing radiation. “Ionizing radiation” includes gamma rays, x-rays, alpha and beta particles, neutrons, protons, high-speed electrons, and other atomic or nuclear particles, but not sound, radio, or light waves.

#### *Federal Nuclear Regulation*

Under federal law, the U.S. Nuclear Regulatory Commission is responsible for regulating nuclear power plants; uses of nuclear material, such as in nuclear medicine; and nuclear waste.

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